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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/392,018

09/08/1999

PETER B. MADOFF

10575/004001

9462

26161

7590

11/22/2005

FISH & RICHARDSON PC

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EXAMINER

GARG, YOGESH C

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Allowability	Application No.	Applicant(s)	
	09/392,018	MADOFF ET AL.	
	Examiner	Art Unit	
	Yogesh C. Garg	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to a Decision on Appeal by BPAI on 11/30/2004.
2. ☒ The allowed claim(s) is/are 1-30 and 32-34.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☒ to Paper No./Mail Date 10/24/2000.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input checked="" type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)
<i>mailed on 10/24/2000</i> | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

Yogesh C. Garg
Primary Examiner

DETAILED ACTION

1. This action is in response to a Decision on Appeal by BPAI on 11/30/2004. Claim 31 is canceled. Currently claims 1-30 and 32-34 are pending for examination.

Allowable Subject Matter

2. Claims 1-30 and 32-34 are allowed. Claims 1, 11, 21 and 32 are independent. Claims 2-10, 26-27 are dependencies of claim 1, claims 12-20, 28-29 are dependencies of claim 11, claims 22-25, 30 are dependencies of claim 21 and claims 33-34 are dependencies of claim 32.

Reasons for Allowance

- 3 The following is an examiner's statement of reasons for allowance:

Claims 1-30 & 32-34

The prior art of record neither anticipates nor renders obvious a method, a system and a computer program product for determining an opening price for a product in a trading system being executed over a distributed network computer system comprising, inter alia, the functionality of determining an imbalance condition between received buy orders and received sell orders for the product; and posting an allocation

Art Unit: 3625

message to market maker participants to communicate an expected allocation of the imbalance for execution at an initial opening of the market in the event that the imbalance exists at the opening (see independent claims 1, 11, 21 & 32).

Applicant's remarks in the Appeal Brief submitted on 4/15/2003 are compelling and commensurate with the original disclosure and are also consistent with Board's decision, see page 7, line 4-page 9, line 7 of the " Decision on Appeal" mailed on 11/30/2004.

5. Discussion of most relevant prior art:

The following references have been identified as most relevant prior art to the claimed invention(s).

The most closely applicable prior art of record is referred to Rickard et al. (US Patent 6,016,483). Rickard et al. also teaches a method and apparatus for determining a set of opening prices and assigning allocation of imbalance after the opening price has been determined. Rickard et al. alone or in combination with another prior art fails to render obvious the application's above-mentioned underlined unique features(s)

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

(i) WO 98/12659 to Rickard et al. teaches a method and apparatus for determining a set of opening prices and assigning allocation of imbalance after the opening price has been determined but it, alone or in combination with another prior art fails to render obvious the application's above-mentioned underlined unique features(s)


7. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C. Garg whose telephone number is 571-272-6756. The examiner can normally be reached on M-F(8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yogesh C Garg
Primary Examiner
Art Unit 3625

YCG
November 14, 2005